



Purchase Order Terms & Conditions

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Classification	Finance - Shared Services
Document Type	Type 2c: Group Policies and Procedures
Version	1.0
Date Approved	April 2020
Next Renewal Date	

PURPOSE & SCOPE

This procedure is designed to provide Purchase Order Terms and Conditions guidance and direction to all MSF Sugar employees and Suppliers.

GENERAL

These terms and conditions apply to all Purchase Orders unless the Purchase Order is made under an Agreement. If the Purchase Order is made under an Agreement then the terms and conditions under the Agreement will apply.

1. DEFINITIONS

In this Purchase Order, unless inconsistent with the context or subject matter:

"Agreement" means a supply agreement and includes any schedules or annexures to the extent that any relevant part of those schedules and annexures are called up and given effect by the body of the Agreement itself;

"Business Day" means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Queensland;

"Confidential Information" means information relating directly or indirectly to MSF Sugar Pty Ltd, its assets and the operation or affairs of MSF Sugar Pty Ltd including without limitation, any aspect of the Purchase Order that is not intended to be disclosed to any other party;

"Conflict of Interest" means having an interest (whether personal, financial or otherwise) which conflicts or may reasonably be perceived as conflicting with the ability of the Supplier to provide the Goods and Services and perform its obligations fairly and objectively;

"Customer" means MSF Sugar Pty Ltd "MSFS" (ABN 11 009 658 708);

"Goods" means the material, plant, item or equipment specified in the Purchase Order;

"GST" means the Goods and Services tax as provided by the GST law;

"GST Law" means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any associated regulations;

"MSFS" means MSF Sugar Pty Ltd (ABN 11 009 658 708);

"Price" means the price or rates specified as such in the Purchase Order;

"Purchase Order" means any electronic order issued by MSF Sugar Pty Ltd to the Supplier to purchase Goods or Services from the Supplier;

"Services" means any Services specified in the Purchase Order (if applicable);

"Supplier" means the person, firm or corporation from whom the Goods and Services are being purchased pursuant to a Purchase Order;

"Tax Invoice" is an invoice which complies with the GST Law relating to the production and form of tax invoices for GST purposes.

2. INTERPRETATION

Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are for reference purposes only and must not be used for interpretation. Words denoting a natural person shall include a corporation and vice versa.

3. ENTIRE AGREEMENT

The Purchase Order constitutes the entire Agreement between the Customer and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise of understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase Order has any effect on the Purchase Order unless specifically incorporated herein.

4. NOTICES

Any Notice or other communication required under the Purchase Order shall be delivered in writing by email to the other party. Verbal instructions or directions from the Customer shall be confirmed in writing to the Supplier within a reasonable time.

5. SUPPLY OF GOODS AND/OR SERVICES

The Goods must be supplied:

- (a) in the manner, quantity and timeframe set out in the Purchase Order; and
- (b) in accordance with Australian Standards and all applicable legislation.

Within ten (10) Business Days of delivery, MSFS will conduct an inspection to ensure the Goods:

- (a) accord with the Purchase Order; and
- (b) contain no defect in material or workmanship.

If the Goods that are delivered do not match the Goods that are described in the Purchase Order, or if the Goods contain any defect in material or workmanship in MSFS's opinion, acting reasonably, MSFS will notify the Supplier of the extent to which the Goods do not match the Goods that were ordered. Within one (1) week of being notified, the Supplier must complete delivery of replacement Goods to MSFS which matches the Goods that are described in the Purchase Order.

6. PRICE AND PAYMENT

The Supplier must issue MSFS with:

- (a) a delivery docket with each order delivered; and
- (b) a Tax Invoice at the time of delivery.

In consideration of the due and proper delivery or performance of the Goods and Services subject of the Purchase Order MSFS will pay to the Supplier the Price at the end of the following month (for instance, an invoice dated 30 September will be paid by 31 October provided that the invoice is received by MSFS in September. If a September invoice is received in October it will be paid in October only if MSFS's accounts payable section has had sufficient time to process the invoice, otherwise the invoice will be paid in November and in these circumstances the timing of the payment will be at MSFS's sole discretion.

The Supplier acknowledges and agrees that MSFS may withhold payment of any applicable invoice until such time as the Supplier has complied with clause 5 of these terms and conditions.

7. GST

Terms which are defined in the GST Law have the meanings given in that law.

Unless expressly included, the consideration expressed to be payable under any clause of, or schedule or annexure to, this Purchase Order for any supply made under or in connection with this Purchase Order does not include GST.

To the extent that any supply made under or in connection with this Purchase Order is a taxable supply, the GST-exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect to the supply.

Where a party to this Purchase Order receives a taxable supply from another party to this Purchase Order, without being obliged under this Purchase Order to provide monetary consideration in exchange, the receiving party shall pay to the supplying party an amount equal to the GST inclusive market value of that taxable supply multiplied by the rate at which GST is imposed in respect of that supply.

Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable pursuant to any supply made under or in connection with this Purchase Order.

If a payment to a party under this purchase is a payment by the other party by way of reimbursement or indemnity that is calculated by reference to the GST-inclusive amount of a loss, cost or expense incurred by that party, then the payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense before the payment is increased for GST.

8. RISK AND RESPONSIBILITY

All risk and responsibility for the Goods remain with the Supplier at all times up to delivery.

9. INDEMNITY

To the maximum extent permitted by law, the Supplier indemnifies and holds harmless MSFS and its officers, directors, employees and agents and parent, subsidiary or affiliated companies, from and against any and all damage, loss, claims and demands of any nature caused by or arising out of the Supplier manufacturing, delivering, and installing the Goods, except if caused by the negligence of MSFS.

10. INSURANCE

The Supplier must, immediately upon request by the Customer, provide the Customer with copies of its certificate of currency for its product and public liability insurance, professional indemnity insurance (to the extent applicable), workers compensation and motor vehicle insurance (to the extent applicable).

11. INDEPENDENT CONTRACTOR

The Supplier acknowledges and agrees with MSFS that in providing the Goods to MSFS it is doing so as in independent contractor and that neither this Purchase Order nor the provision of the Goods will create any relationship of employer and employee or partnership between MSFS and the Supplier.

12. WARRANTIES

The Supplier warrants to MSFS that:

- (a) it has the capacity, experience and skill to supply the Goods in accordance with the Purchase Order;
- (b) it is the ultimate provider of the Goods and is not an employer or contractor of a third party in respect of the Goods;

(c) it is capable of providing the Goods in accordance with this Purchase Order.

13. DEFECTS

Where the law implies into this Purchase Order any term, condition or warranty for the Goods and Services supplied, and those laws avoid or prohibit provisions excluding or modifying them, then the term, condition or warranty shall be deemed to be included in this Purchase Order.

14. CONFLICT OF INTEREST

The Supplier warrants that, to the best of its knowledge, as at the commencement date of the Purchase Order neither the Supplier nor any of its officers, employees, agents or sub-contractors have, or are likely to have a Conflict of Interest in the performance of the Suppliers obligations under the Purchase Order.

If a Conflict of Interest or risk of Conflict of Interest arises during the term of the Purchase Order (without limitation, including work undertaken by the Supplier for any entity other than the Customer), the Supplier must immediately give notice of the Conflict of Interest, or the risk of it, to the Customer.

15. PATENTS, TRADEMARKS AND COPYRIGHT

The Supplier represents that it has fully investigated all specifications, including any furnished by the Customer in connection with the Goods, and based on its past experience and superior knowledge warrants that production of the Goods will not infringe any patent, trademark, trade secret or copyright.

The Supplier shall defend, indemnify and hold the Customer and its successors harmless from and against any and all claims, demands, costs and liabilities including legal expenses, arising out of any such infringement.

16. MATERIALS AND WORKMANSHIP

All Services and/or Goods shall be suitable for the purpose for which they are required. The Supplier must use new and undamaged materials, unless otherwise specified in the Purchase Order and the workmanship must be of a high quality and standard. The work must be carried out in accordance with good engineering practice and comply with all applicable Australian Standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety. Goods supplied must meet all applicable Australian Standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety.

17. INTELLECTUAL PROPERTY

Any intellectual property in any sketches, plans, drawings, designs, reports or documents prepared by the Supplier in the provision of the Services under the Purchase Order, will upon its creation vest in the Customer. Any intellectual property owned by the Supplier prior to the execution of the Services under the Purchase Order will remain the property of the Supplier, although such intellectual property may be used by the Customer pursuant to a royalty-free license whilst the Services are being performed.

18. CONFIDENTIAL INFORMATION

The Supplier acknowledges that the Supplier may become acquainted with or have access to Confidential Information, and agrees to maintain the confidence of the Confidential information and to prevent unauthorised disclosure to or use by any other person.

The Supplier must not make any statements, comments or representations in relation to MSFS whatsoever, unless prior written consent is obtained from MSFS (which can be granted, refused or granted subject to conditions in MSFS's absolute discretion).

19. SUBCONTRACTING AND ASSIGNMENT

The Supplier must not subcontract nor assign all or part of the Purchase Order without the prior written consent of the Customer. The Supplier must provide for the approval of the Customer full particulars of any work to be subcontracted together with details of the proposed subcontractor prior to entering into any subcontract.

Approval of the Customer to any subcontract will in no way relieve the Supplier of any of its obligations under the Purchase Order.

20. GOVERNING LAW

This Purchase Order is governed by the laws of Queensland and the Commonwealth of Australia which are in force in Queensland.

The parties submit to the exclusive jurisdiction of the Courts of Queensland, relevant Commonwealth Courts in Queensland and Courts competent to hear appeals from them.

APPENDIX 1 – DOCUMENT CONTROL

Requirement	Description
Classification	Finance - Shared Services
Document Type	Type 2c: Group Policies and Procedures
Document Owner	Chief Financial Officer
Approving Authority	CFO
Frequency of Reviews	3 years
Next Review Date	
Publishing	Internal document with unrestricted access Published on the Company's Intranet
Intranet Keyword Search	[Enter]

Version	Prepared by / Reviewed by	Approved by	Date
0.1	Sue Accatino/Belinda Kenny	Krisda Monthienvichienchai Interim CEO MSF Sugar	April 2020
0.2			
0.3			